IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI

C/EH/40480/2017 & C/41434/2017

(Arising out of Order-in-Appeal C. Cus. No. 392/2017 dated 19.05.2017 passed by the Commissioner of Customs (Appeals-II), Chennai)

Shri R. Ravi : Appellant

Vs.

CC (Sea), Chennai-II : Respondent

Appearance

Shri A.K. Jayaraj, Advocate
for the appellants

Shri R. Subramaniyam, AC (AR)
for the Respondent.

CORAM :

Hon'ble Ms. Sulekha Beevi, Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing/Decision: **28.08.2017**

FINAL ORDER No. 41944 **/2017**

Per Bench

The appellant filed miscellaneous application seeking early hearing of the appeal and filed affidavit to state that the imported goods are still lying with the department. That appellant has to incur huge demurrage and container charges and the goods will become obsolete in the case of delay to be realised to the appellant. Since we were satisfied with the reasons given for

Customs, Excise & Service Tax Appellate Tribunal early hearing of the appeal, the petition was allowed. With the consent of both sides, the main appeal itself was taken up for disposal.

2.1 The brief facts of the case are that M/s. Rock Impex filed a Bill of Entry dated 12.02.2016 through their Customs Broker M/s. Hindustan Shipping & Clearing House, for clearance of the goods declared as "General Brand Split Type Air Conditioners both Indoor and Outdoor Unit cap 1.0 ton (Gas R32 – Non ODS)" (80 Nos) of Thailand origin imported from M/s. Ganga Jamuna Electronics Pvt. Ltd., Singapore. On examination of the container it was found different sizes of packages were inside along with other cargo which appeared to be of branded LED/LCD. The container was detained for further examination and referred to SIIB for further investigation. During examination of the container on 26.02.2016, it was found to contain 161 packages consisting of 60 sets of 'General Brand Split Air Conditioner' as against the declared quantity of 80 sets, 1 no. of 55" Samsung Smart Television and 40 Nos. of 40" Sony Bravia LED Televisions. The alleged 41 nos. of televisions were kept concealed in the said container behind the declared goods. Search was conducted in the office and residential premises of the importer Shri R. Ravi and the premises of Customs broker M/s. Hindustan Shipping and Clearance house. Import documents were recovered for further verification. A statement was also recorded from Shri R. Ravi, IEC holder. The department seized the goods alleging that the appellant had undervalued the goods and not declared the televisions other than the declared

Customs, Excise & Service Tax Appellate Tribunal goods and thus confiscated the goods under Section 111(d), 111(i) and 111(m) of the Customs Act.

2.2 The appellant then filed writ petition before the Hon'ble High Court of Madras and vide order dated 12.01.2017, the High Court directed to release the 60 Nos. of Air conditions upon deposit of differential duty of Rs. 3,27,141/- upon execution of personal Bond at Rs. 8,75,160/- and directed the authority to consider the request of the appellant for re-export of 41 Nos. of LED Television sets.

2.3 A SCN dated 24.08.2016 was issued by the Addl. Commissioner of Customs (SIIB) proposing enhancement of the value of the imported goods of 60 Nos. of General Brand Split Air Conditioners along with customs duty demand and confiscation of 40 Nos. of LED sets under Section 119 of the Customs Act and imposition of penalty under Section 112 ibid. After due process of law, the adjudicating authority rejected the declared value and enhanced the value of the imported goods of 60 Nos. of Air conditioners and re-determined as Rs. 8,75,160/-. The same were confiscated with an option to redeem the goods on payment of redemption fine of Rs. 1,70,000/- along with payment of differential duty of Rs. 3,27,141/-. The undeclared goods viz., 40 nos. of Sony Bravia LED Television sets and 1 unit of Samsung 22" LED set was confiscated absolutely and imposed redemption fine of Rs. 5,16,000/- to redeem the goods for the limited purpose of re-export. A penalty of Rs. 15,00,000/- was imposed on Shri R. Ravi, Proprietor. Aggrieved, they filed appeal before the Commissioner

(Appeals), who upheld the order of the adjudicating authority except reducing the penalty from Rs. 15,00,000/- to Rs.10,00.000/-. Hence this appeal.

3. The Ld. Counsel, Shri A.K. Jayaraj, appearing on behalf of the appellant submitted that a letter from the supplier was furnished to the department wherein the supplier had accepted the mistake that happened in their loading department and stated that there is no intention or any wilful mis-declaration of the goods. That therefore the confiscation and imposition of fine and penalty is totally baseless. He further submitted that they had placed order for only 80 nos. of Air conditioners and were not aware about other goods being stuffed in the container until it was brought out by the department. He stated that the goods imported are neither restricted goods nor prohibited goods and department has also accepted that the above goods are free to import and the supplier also agreed to take back the cargo. In such situation the imposition of such huge fine and penalty for re-export is baseless. He prayed that the redemption fine and penalty may be set aside.

4. Ld. AR, Shri R. Subramaniyam, AC, appearing on behalf of the Revenue reiterated the findings in the orders of the authorities below. He argued that the appellant has mis-declared the goods. The undeclared goods were concealed behind the declared goods which would show the intention of the importer to smuggle the goods into India. Hence, the impugned order needs to be sustained.

5. Heard both sides.

6. On perusal of the impugned order, it is seen that only on verification and examination it was revealed that apart from the declared goods there were 41 nos. of undeclared goods also stuffed in the container. A letter has been produced by the appellant in which it is stated that it was due to mistake at the end of the supplier while loading. We are not able to accept this submission in toto. However, the appellant intends to re-export the undeclared goods. The redemption fine is to be imposed for the limited purpose of re-export of the goods. Taking into account the facts put forward before us, we deem it fit to reduce the redemption fine to Rs. 3,00,000/- and reduce the penalty to Rs.5,00,000/- which is in our view would meet the ends of justice. The impugned order is modified only to the extent of reducing the redemption fine imposed in regard to undeclared goods to Rs.3,00,000/- and reducing the penalty to Rs. 5,00,000/-.

7. Thus the appeal is party allowed with consequential reliefs, if any.

(Operative portion of the order was pronounced in open court)

(MADHU MOHAN DAMODHAR)
MEMBER (TECHNICAL)

(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

BB

Customs, Excise & Service Tax Appellate Tribunal

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